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**IN THE
COURT OF APPEALS OF INDIANA**

SHAWN LEE CLARK,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A03-0701-CR-47
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0608-FA-46

August 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Shawn Lee Clark appeals the trial court's imposition of a six-year executed sentence following his plea of guilty to dealing in cocaine as a class B felony. We affirm.

Issue

Clark questions whether his sentence is appropriate in light of the nature of his offense and his character.

Facts and Procedural History

On August 8, 2006, a confidential informant working with the Gary Police Department contacted Clark, and the two agreed to meet at a Gary gas station. In the gas station parking lot, Clark exited his vehicle and gave the informant two small baggies containing a white rock-like substance in exchange for fifty dollars. The white substance later tested positive for cocaine and had a field weight of 1.02 grams. On August 10, 2006, the State charged Clark with dealing in cocaine as a class A felony, dealing in cocaine as a class B felony, and possession of marijuana as a class A misdemeanor. On November 28, 2006, Clark pled guilty to dealing in cocaine as a class B felony, and the State agreed to dismiss the remaining charges. On December 27, 2006, the trial court sentenced Clark to six years executed. Clark now appeals.

Discussion and Decision

Clark argues that his six-year sentence is inappropriate in light of the nature of his offense and his character. Clark asks us to suspend his sentence, citing Indiana Appellate Rule 7(B), which states that this Court “may revise a sentence authorized by statute, if, after due consideration of the trial court’s decision, the Court finds that the sentence is

inappropriate in light of the nature of the offense and the character of the offender.”¹

The trial court sentenced Clark to six years, which is the minimum sentence within the applicable statutory range. *See* Ind. Code § 35-50-2-5 (“A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.”) The mitigators found by the trial court reflect Clark’s character: (1) Clark has no prior criminal history; (2) he accepted responsibility for his crime by pleading guilty; (3) he expressed remorse at the sentencing hearing; and (4) he is likely to respond affirmatively to probation or short term imprisonment. Appellant’s App. at 30. For all these reasons, the trial court chose the minimum sentence within the statutory range.

Clark claims that the trial court should have considered three additional factors in

¹ Within the argument section of his brief, Clark alleges that the trial court failed to consider certain mitigating factors. He fails to identify this as a separate issue from his Rule 7(B) argument, however, and cites no supporting authority. *See Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (holding that reasons cited by trial court for imposing particular sentence, and the omissions of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion, while review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B)). Thus, the portion of his argument regarding the court’s failure to recognize certain mitigators is waived. *See* Indiana Appellate Rule 46(a)(8)(a) (“Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]”). Waiver notwithstanding, a reviewing court may find an abuse of discretion when the trial court omits mitigating factors clearly supported by the record and argued by the defendant at sentencing. *Anglemeyer*, 868 N.E.2d at 490-91. Here, Clark argues that the trial court failed to consider his role as a father, as well as the undue hardship his two young children will suffer during his term of imprisonment. Our supreme court has said, “[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in undue hardship.” *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). Clark fails to show any special circumstances, and, in fact, it is doubtful that he provided consistent financial support for his children prior to entering prison. The presentence investigation report indicates that his employment history over the course of his children’s lifetimes has been sporadic at best and that prior to November 2006, he had not been employed for approximately sixteen months. Ironically, Clark also claims that the trial court erred by failing to consider as a mitigator his employment during the last several weeks of 2006. The trial court was certainly not obligated to consider such a short term of employment as a significant mitigator. In sum, there was no abuse of discretion with regard to the trial court’s decision not to assign mitigating weight to these factors, and thus, Clark’s second argument, such as it is, fails.

determining his sentence: (1) that he is a father to two young children; (2) that his dependants will suffer undue hardship during his imprisonment; and (3) that he was employed at the time of sentencing. We note that Clark's status as a father and the effect of his sentence upon his dependents are not issues of character and are therefore irrelevant to our Appellate Rule 7(B) review. As for his employment, the presentence investigation report indicates that Clark had been working as a "steel clerk" from November 17, 2006 until the date of his sentencing approximately five weeks later. Presentence Investigation Report at 6. While earning a regular paycheck was certainly a step in the right direction for Clark, we cannot conclude that it warrants a suspended sentence, particularly in light of his spotty employment history.

As for the nature of Clark's offense, we agree with the State that his crime of dealing in cocaine is a serious one. Clearly, as noted above, our legislature considers the commission of a class B felony worthy of a sentence in the range of six to twenty years. *See* Ind. Code § 35-50-2-5. The trial court imposed the minimum executed sentence in this range.

In sum, we cannot conclude that Clark's sentence is inappropriate in light of the nature of his offense and his character.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.